

Montana Water Court
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MONTANA WATER COURT, UPPER MISSOURI DIVISION
MISSOURI RIVER FROM SUN RIVER TO MARIAS RIVER - BASIN 41Q
INTERLOCUTORY DECREE

CLAIMANTS: Mary E. Hill; Jeanne M. Rankin

CASE 41Q-0012-I-2022

41Q 30132982

NOTICE OF FILING OF MASTER'S REPORT

This Master's Report was filed with the Montana Water Court on the above stamped date. Please review this report carefully.

You may file a written objection to this Master's Report within **10 days** of the stamped date if you disagree or find errors with the Master's findings of fact, conclusions of law, or recommendations. Rule 23, W.R.Adj.R. If the Master's Report was mailed to you, the Montana Rules of Civil Procedure allow an additional 3 days be added to the 10-day objection period. Rule 6(d), M.R.Civ.P. If you file an objection, you must serve a copy of the objection to all parties on the service list found at the end of the Master's Report. The original objection and a certificate of mailing to all parties on the service list must be filed with the Water Court.

If you do not file a timely objection, the Water Court will conclude that you agree with the content of this Master's Report.

MASTER'S REPORT

FINDINGS OF FACT

1. Claim 41Q 30132982 appeared in the 41Q Interlocutory Decree with following Department of Natural Resources and Conservation (DNRC) issue remarks:

NO FLOW RATE HAS BEEN CLAIMED. THE FLOW RATE GUIDELINE FOR THIS PURPOSE IS 35 GPM.

THIS CLAIM NUMBER WAS NOT INCLUDED IN THE BASIN 41Q DECREE ISSUED 05/27/2010.

2. A filing deadline was set for the claimants to comment on how the flow rate issue remark should be resolved. The order setting the filing deadline explained that claim 41Q 30132982 is a stock water right that diverts groundwater using a spring box. The DNRC flow rate guideline for this type of water right is 35 gallons per minute (gpm), which is generally a reasonable flow rate for a stock water right.

3. The order setting filing deadline stated that if the claimants did not comment on the flow rate issue remark by the deadline, claim 41Q 30132982 would be decreed a flow rate of 35 gpm. Nothing was filed by the deadline.

4. Based on the information before the court, 35 gpm is a reasonable flow rate for claim 41Q 30132982. Decreeing claim 41Q 30132982 with a flow rate of 35 gpm resolves the flow rate issue remark. The issue remark should be removed from the claim.

5. The issue remark stating that the claim was not included in the Basin 41Q Preliminary Decree is a notice issue remark. Its purpose is to provide notice that this claim has not been included in a water court decree before. The necessary notice has been provided, and the issue remark should be removed from the claim.

CONCLUSIONS OF LAW

1. A properly filed claim of an existing right or an amended claim of existing right is prima facie proof of its content. § 85-2-227, MCA. This prima facie proof may be

contradicted and overcome by other evidence that proves, by a preponderance of the evidence, that the elements of the claim do not accurately reflect the beneficial use of the water right as it existed prior to July 1, 1973. This is the burden of proof for every assertion that a claim is incorrect. Rule 19, W.R.Adj.R.

2. Section 85-2-248(2), MCA requires the Water Court to resolve all issue remarks that are not resolved through the objection process.

3. If a claimant fails to comply with an Order issued by the Water Court in its review of issue remarks, including an Order issued by a Water Master appointed by the Court, the Court on its own initiative may amend or dismiss the claim to conform with information in the claim file or information obtained as part of the adjudication process. Section 85-2-248(9) MCA. The information before the court indicates that claim 41Q 30132982 should be decreed with a flow rate of 35 gpm.

RECOMMENDATIONS

1. Claim 41Q 30132982 should be modified as provided above.
2. The issue remarks should be removed from claim 41Q 30132982.

A Post Decree Abstract of Water Right Claim is served with the Report to confirm that the changes have been made in the state's centralized database.

ELECTRONICALLY SIGNED AND DATED BELOW.

Service via USPS Mail:

Mary E. Hill
50 Goose Creek Road
Raynesford, MT 59469

Jeanne M. Rankin
50 Goose Creek Road
Raynesford, MT 59469

POST DECREE
ABSTRACT OF WATER RIGHT CLAIM
MISSOURI RIVER, FROM SUN TO MARIAS RIVERS
BASIN 41Q

Water Right Number: 41Q 30132982 STATEMENT OF CLAIM

Version: 2 -- POST DECREE

Status: ACTIVE

Owners: JEANNE M RANKIN
50 GOOSE CREEK RD
RAYNESFORD, MT 59469

MARY E HILL
50 GOOSE CREEK RD
RAYNESFORD, MT 59469

Priority Date: DECEMBER 31, 1939

Type of Historical Right: USE

Purpose (use): STOCK

Flow Rate: 35.00 GPM

Volume: THIS RIGHT INCLUDES THE AMOUNT OF WATER CONSUMPTIVELY USED FOR STOCK WATERING PURPOSES AT THE RATE OF 30 GALLONS PER DAY PER ANIMAL UNIT. ANIMAL UNITS SHALL BE BASED ON REASONABLE CARRYING CAPACITY AND HISTORICAL USE OF THE AREA SERVICED BY THIS WATER SOURCE.

Source Name: SPRING, UNNAMED TRIBUTARY OF BIG OTTER CREEK

Source Type: GROUNDWATER

Point of Diversion and Means of Diversion:

<u>ID</u>	<u>Govt Lot</u>	<u>Qtr Sec</u>	<u>Sec</u>	<u>Twp</u>	<u>Rge</u>	<u>County</u>
1		SENE SW	4	17N	8E	JUDITH BASIN

Period of Diversion: JANUARY 1 TO DECEMBER 31

Diversion Means: SPRING BOX

Period of Use: JANUARY 1 TO DECEMBER 31

Place of Use:

<u>ID</u>	<u>Acres</u>	<u>Govt Lot</u>	<u>Qtr Sec</u>	<u>Sec</u>	<u>Twp</u>	<u>Rge</u>	<u>County</u>
1			SENE SW	4	17N	8E	JUDITH BASIN